National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: June 28, 2002

TO: Bruce I. Friend, Assistant to the Regional Director Veronica I. Clements, Regional Attorney Region 32

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Service Employees International Union, Local 250 (Assisted Care, Inc.), Case 32-CB-5400; United Domestic Workers of America, AFSCME (Assisted Care, Inc.) Case 32-CB-5401; Service Employees International Union, Local 998 (Assisted Care, Inc.) Case 32-CB-5404

332-0100, 332-2520, 332-2520-8050, 332-2540, 332-2560, 332-5012, 332-7580, 536-0150, 536-2563, 536-2509, 536-2501-8000, 554-1401, 554-1401-5000, 554-1433-3300, 554-1433-3350-6700

These Section 8(b)(3) and 8(b)(1)(A) cases present, inter alia, the issue of whether an incumbent union effectively disclaimed interest in representing several bargaining units. FACTS

1. The Background of the Parties

Assisted Care, Inc. (ACI or Employer) contracts with various State of California counties to provide home health care services. United Domestic Workers of America/AFSCME (UDWA) was the incumbent Section 9(a) representative of the "in home support services" (IHSS) employees of ACI working in Riverside, Ventura, and San Joaquin Counties, California.1 IHSS workers provide in-home personal and homemaker services to eligible blind, aged, and disabled individuals, thereby helping them avoid institutionalization. ACI employs approximately 175 IHSS employees in Ventura and San Joaquin Counties. The parties' last labor agreement covering San Joaquin County expired on September 30, 2000. The last agreement covering Ventura County expired on June 30, 1998.

Various locals of the Service Employees Int'l Union (SEIU) also represent health care workers in this same geographic area.

2. The Creation of the CHC in 2000

About June 16, 2000, UDWA and SEIU formed the "California Homecare Council, Partnership Between UDWA/AFSCME and SEIU" (CHC), a union coordinating body designed to rationalize and allocate union resources to better help organize health care workers in the geographic area covered by the jurisdictions of these labor organizations.

By letter dated July 24, 2000, CHC officers advised ACI vice president Chris Malicki of the formation of CHC. The letter described the UDWA/SEIU partnership, specifically noting that those labor organizations agreed to pool their resources, and that organizing and representation jurisdiction would be assigned to particular unions on a county-by-county basis. CHC also stated that IHSS contract counties San Joaquin, San Mateo, Santa Cruz, and Ventura, would be "transitioned to SEIU." CHC's letter did not explain the scope of the "transitioning" or how it might occur, but did state UDWA would retain its legal status under extant collective-bargaining agreements.

CHC did not contact ACI again regarding the UDWA-SEIU partnership until January 18, 2001.2

3. The Unions' Conduct in 2001 Regarding the employees of ACI in San Joaquin and Ventura Counties

In a January 16, 2001 letter addressed to "San Joaquin UDW Members," UDWA President Ken Seaton-Msemaji announced the formation of the CHC. Under the heading "How Will This Affect You?," Seaton-Msemaji told employees that "some counties that currently have UDW representation will be represented by SEIU in the future." Seaton-Msemaji went on to encourage San Joaquin employees "to fill out the enclosed authorization card and become a member of SEIU Local 250 today.

Mail the card in or bring it with you to the meeting. The sooner we join together the stronger we will all be." The "enclosed notice" advised unit employees that "AS A CONDITION OF EMPLOYMENT, YOU MUST JOIN [SEIU Local 250] AND PAY MEMBERSHIP DUES OR PAY A FAIR SERVICE FEE." (Emphasis in original).

By facsimile letter dated January 18, ACI vice president Malicki asked UDWA representative Darlene Fick whether unit members had voted to change their representation, how employees were notified of any change, and what legal authority allowed for the apparent change. Fick did not respond.

By facsimile letter dated February 14, Malicki asked UDWA representative Fick what union(s) represented San Joaquin and Ventura County-based ACI employees. Malicki also asked why, if UDWA represented those employees, had SEIU representatives asked employees to sign "union cards authorizing payroll deductions."3

By letter dated March 26, Seaton-Msemaji advised "Ventura County UDW Member[s]," of the formation of the CHC, describing it as a partnership between UDWA and SEIU.4 The letter further advised members that jurisdiction over Ventura County had been assigned by the CHC to the SEIU, and that the employees would "have the opportunity to sign up directly with the SEIU union for representation." The letter also announced a meeting that would take place on April 11 at Local 998's offices.

By letter dated May 2 to ACI VP Malicki, Barry Hammitt, Executive Director of SEIU Local 998, advised that "since February 2001, [Local 998] has assumed the day to day representation of the United Domestic Workers-represented employees in Ventura County."

On May 9, SEIU Local 998 filed unfair labor practice charges against ACI, alleging that ACI had committed several 8(a)(1) violations. The body of the charge, signed by Local 998 Deputy Director Ellyn Dembrowski, states, "SEIU Local 998 represents [sic] these workers since 6-16-2000 in an agreement reached between two International Unions and [sic] provide documentation of this accretion at any hearing called."

On May 21, Dana Simon, Co-Director of the Homecare Division of SEIU Local 250, called Malicki to introduce himself to Malicki and request a "Labor-Management Committee" meeting, and to bargain for a successor labor agreement.5

By facsimile letter dated May 30, Malicki requested that UDWA Secretary Treasurer and "General Counsel" Fahari Jeffers provide copies of any written agreements between UDWA and SEIU setting forth the legal authority for UDWA to assign representation of unit employees to SEIU. UDWA did not respond to Malicki's inquiries.

On or about June 1 and 4, UDWA and SEIU Local 250 executed a "Service Agreement" covering the ACI employees in San Joaquin County. In this agreement Local 250 agreed to handle "all matters pertaining to the administration of the . . . collective bargaining agreement[.]" The Service Agreement included an indemnification clause providing that "SEIU Local 250 shall indemnify and hold UDWA/AFSCME harmless against any and all duty of fair representation claims or liabilities arising from or by reason of any action or inaction by representatives of Local 250 arising under this Service Agreement or any provisions of the collective bargaining agreement between UDWA/AFSCME and the Employer."

On or about July 7 and 10, SEIU Local 998 and UDWA executed a similar "Service Agreement" regarding ACI's Ventura County employees. The Service Agreement between UDWA and Local 998 is substantially the same as the agreement between UDWA and Local 250. It also has a similar indemnification clause in favor of UDWA.

On July 12, Local 250 agent Simon sent Malicki a copy of Local 250's Service Agreement with UDWA.

By letter dated August 2, Simon requested a Labor-Management Committee meeting to bargain for a successor labor contract.

Malicki and other ACI officers met with Simon and Local 250 Field Representative Randall Downey on August 21 to address contract administration issues and to negotiate a successor labor agreement. The parties met again on September 26 and October 23; representatives of Local 250 and ACI have not met since October 23. There is no evidence that UDWA was involved in any recent dealings between Local 250 and ACI.

On October 19, Local 250 filed an unfair labor practice charge against ACI alleging, inter alia, that ACI unlawfully refused to meet and bargain with SEIU Local 250. The Region is prepared to dismiss that charge.

By memorandum dated December 3, ACI proposed to UDWA changing health insurance plans for all three units in Ventura, San Joaquin and Riverside Counties.

By letter dated December 11, UDWA Secretary Treasurer Fahari Jeffers consented to the change for bargaining unit members in Riverside County. She stated further, "with regard to Ventura and San Joaquin Counties, the appropriate locals of the Service Employees' International Union, which administers our Collective Bargaining with ACI in those counties, will be in contact with you."

By letter dated December 17, Local 998 representative Hammitt advised Malicki that Local 998 had discussed the proposed change with its "members" and they did not support the change. Hammitt cited Article 27 of the parties' expired collective-bargaining agreement that requires prior notification for changes. He also stated that his letter served as an "official disapproval" of the proposed change to the Kaiser health plan.

Also on December 17, Local 250 representative Simon advised Malicki that Local 250 intended to grieve any attempt to change the health insurance program for ACI employees in San Joaquin County.

By letter dated December 20, ACI legal counsel Zev Eigen notified all three unions, UDWA, Local 250 and Local 998, that ACI would only recognize and bargain with UDWA as the exclusive collective-bargaining representative of its unit employees. Eigen questioned Locals 250 and 998's legal status and accused them of usurping UDWA's authority to administer the expired labor contracts and interfering with UDWA's authority as the employees' exclusive representative. Eigen threatened to file unfair labor practice charges against the unions if they did not provide legal authority for the apparent assignment of representation.

By letter dated December 20, Jeffers advised Eigen that "UDW administers the contract with ACI in Riverside County, [and] the Ventura and San Joaquin County contracts are administered by SEIU." Therefore, Jeffers, as a UDWA representative, could only speak for Riverside County employees.

By letter dated December 21, Hammitt, responded to Eigen's letter stating that, "Local 998 will represent the workers in Ventura County, California on all matters that pertain to the maintenance and enforcement of the collective bargaining agreement between the UDW and Assisted Care."

Local 250 responded to Eigen's letter through its attorney, William Sokol, by letter dated January 7, 2002. Sokol stated that Local 250 had a service agreement with UDWA to provide certain services to UDWA, including helping with bargaining, processing grievances, and other representational matters. Sokol also stated that UDWA was, and continued to be, the exclusive bargaining representative of Unit employees.

By letter dated January 23, 2002, Hammitt formally requested "negotiations for a successor Memorandum of Understanding between United Domestic Workers and SEIU Local 998 - as their agent and Assisted Care, Inc."

On February 27, 2002, UDWA provided ACI with a copy of its Service Agreement with Local 998.

ACI has not withdrawn recognition from the UDWA. However, until ACI receives proof that SEIU Locals 250 and 998 are legally empowered to represent Unit employees, ACI will only deal with UDWA.

4. The Pending ULP charges

In January 2002, ACI filed an 8(b)(3) and 8(b)(1)(A) charge against UDWA and filed 8(b)(1)(A) charges against SEIU Local 250 and SEIU Local 998.

The Region has concluded, inter alia, that Locals 250 and 998 attempted to act as the exclusive bargaining representative of the

ACI employees in their respective counties; and that UDWA permitted Locals 250 and 998 to substitute themselves as the exclusive bargaining representative for these ACI employees. It would find that by this conduct each union violated Section 8 (b)(1)(A). As to the Section 8(b)(3) charge, the Region recognizes that UDWA's obligation to bargain is governed by whether UDWA has effectively disclaimed interest in representing ACI's employees in San Joaquin and Ventura counties. The Region seeks advice as to that issue and as to what, if any, remedies should be sought.

ACTION

We conclude that UDWA has engaged in a course of conduct that constitutes an effective disclaimer of interest in representing the San Joaquin and Ventura County bargaining units of ACI employees. Based upon this effective disclaimer of interest, the Region should dismiss the pending Section 8(b)(3) charge against UDWA.

We further conclude that, since UDWA's conduct amounted to an effective disclaimer, the Unions' attempt to transfer representation of the ACI employees in San Joaquin and Ventura Counties from UDWA to SEIU Locals 250 and 998 can be viewed as an internal union matter. There is no evidence that the Employer acquiesced in the Unions' plan to transfer representational responsibilities to a union that had not demonstrated majority support. There is also no evidence that any of the Unions engaged in traditional Section 8(b)(1)(A) "restraint or coercion" within the Section 10(b) period to induce employees either to join SEIU Locals 250 and 998 or to execute dues check-off authorizations in either union's favor. In these circumstances, dismissal of the Section 8(b)(3) charge will be sufficient to halt the Unions' efforts to transfer representation rights and it is inappropriate to proceed on the Section 8(b)(1)(A) allegations.

1. UDWA's effective disclaimer of interest

Initially, we note that it is permissible for an exclusive collective-bargaining representative under Section 9(a) of the Act to assign another labor organization to act on its behalf and carry out its representation duties.6 However, where an incumbent union goes beyond merely creating an agency relationship with a second union and instead attempts to substitute for itself another labor organization as the new Section 9(a) representative, the unit employees' fundamental Section 7 rights may be implicated. If an incumbent union attempts such a wholesale transfer of representational duties and responsibilities, such conduct can be viewed as a de facto effective disclaimer of representation.7 Conduct by an incumbent union that constitutes an effective disclaimer of representation will be given effect by the Board, regardless whether the union expressly asserts it has disclaimed representation.8

We conclude that UDWA effectively disclaimed interest in representing ACI's employees in San Joaquin and Ventura Counties by its entire course of conduct in this case. UDWA's actions went well beyond the mere creation of bona fide agency relationships with SEIU Locals 250 and 998. Rather, viewed in its entirety, UDWA's conduct reveals its intention to transfer its representational status to these SEIU Locals in two California counties.

Initially, UDWA co-founded the CHC, under whose auspices the three Unions divided the State of California into "UDWA only and SEIU only" territories, broken down by counties.9

UDWA then sent letters to its members encouraging them to join the SEIU Locals and execute dues authorization cards on their behalf.

The three Unions then entered into their Service Agreements that delegated all collective bargaining and grievance adjustment duties from the UDWA to the SEIU Locals. More importantly, the Service Agreements each contained indemnification clauses that held UDWA harmless for any breaches of the duty of fair representation by the SEIU Locals.10

Finally, UDWA then "bowed out" of representing these unit employees, leaving all aspects of collective bargaining and grievance adjustment to Locals 250 and 998, conduct consistent with its de facto disclaimer of interest. Thus, UDWA did not thereafter process a single grievance, engage in any contract negotiations with ACI, or otherwise appear interested in representing ACI's San Joaquin or Ventura Counties IHSS workers.11

We also conclude that UDWA disclaimed representation for the two ACI units for a lawful reason, i.e., to combine resources

with SEIU and thereby augment their efforts to organize more IHSS workers in California.12 Its motive, therefore, does not undercut our conclusion that the disclaimer was effective.

By its unequivocal and effective disclaimer of interest, UDWA ceased to be the Section 9(a) representative of the unit employees involved.13 Thereafter, it could not resurrect its bargaining representative status and compel ACI to engage in good faith bargaining.14 Thus, UDWA had no further statutory obligation or authority to bargain with ACI under Section 9(a) of the Act and, therefore, did not violate Section 8(b)(3) by failing and/or refusing to meet with the Employer for collective bargaining.15 Accordingly, this allegation should be dismissed, absent withdrawal.

2. The Unions' liability under Section 8(b)(1)(A) for their attempt to transfer representation of the ACI San Joaquin and Ventura County Employees from UDWA to SEIU Locals 250 and 998

A union violates Section 8(b)(1)(A) if it accepts exclusive recognition from an employer when it does not enjoy majority support of unit employees or when it otherwise accepts employer assistance that is unlawful under Section 8(a)(2).16 A union also violates Section 8(b)(1)(A) if, in the absence of a valid union security clause, it threatens employees with job loss if they refuse to join the union.17 However, non-coercive organizing activities by minority unions do not violate Section 8(b)(1)(A).18 Finally, absent coercion, a transfer of jurisdiction between two unions over particular represented union members is a privileged internal union matter and does not, standing alone, violate Section 8(b)(1)(A).19

Under these principles, the Unions' conduct here falls short of an 8(b)(1)(A) violation.

We do not regard the Employer's dealing with the SEIU locals as constituting a grant of recognition or unlawful assistance to these unions. In August and September the Employer met and bargained with Local 250 representatives for a successor agreement. During that same time period, the Employer processed grievances filed by each of the SEIU Locals. Although such conduct can be characterized as "dealing" with the SEIU locals,20 under closer scrutiny, it is clear that the Employer only "dealt" with these labor organizations as the purported agents of UDWA, the Section 9(a) representative.21

There is no evidence that ACI was clearly aware of the Unions' scheme to substitute the SEIU Locals for UDWA as the Section 9(a) representative. Thus, neither SEIU Local clearly demanded exclusive recognition from ACI during the period nor did ACI ever grant such recognition.22 The evidence shows that the Employer only met with SEIU representatives after UDWA repeatedly asserted that UDWA remained the 9(a) representative and the SEIU Locals were merely acting as UDWA's agents.23 Notwithstanding UDWA's assertions, the Employer continued to question the Unions' exact relationships. Finally, unconvinced that UDWA and the SEIU Locals were maintaining true principal-agent relationships, ACI refused to deal with any labor organization other than UDWA regarding its Ventura and San Joaquin County employees. In these circumstances the Employer's limited dealing with the Unions was not unlawful assistance under Section 8(a)(2).24

Where the Employer's dealing with the two SEIU Locals was not within the ambit of 8(a)(2), we concluded that these Unions' dealings with the Employer did not violate was not within the ambit of Section 8(a)(2), Section 8(b)(1)(A) under any Bernhard-Altmann theory.

Further, there is no evidence that the SEIU Locals otherwise coerced ACI employees within the 10(b) period. Local 250's dual-purpose card advising employees they must become members and pay dues to that union "AS A CONDITION OF EMPLOYMENT" would constitute an unlawful threat if it was given to ACI employees by agents of any of the three Unions. However, the only evidence that any of the unions conveyed these cards to unit employees is UDWA's January 2001 letter to its San Joaquin members, which was sent well outside the 10(b) period. As all the evidence of such violation is time-barred, no complaint could issue on this conduct.25 There is no evidence that any of the charged unions used any other manner of threats or coercion within the 10(b) period to compel employees to either join SEIU Locals 250 or 998 or to execute dues check-offs in their favor as a condition of employment.

If unaccompanied by coercion, the Unions' attempt to transfer jurisdiction over the ACI employees does not violate Section 8(b)(1)(A).26 At most, the SEIU Locals seized upon the opportunity of UDWA's de facto disclaimer of interest to conduct, in essence, an organizing drive among the ACI's Ventura and San Joaquin County employees under false pretenses. Thus, by dealing with the Employer for collective-bargaining and grievance adjustment purposes while operating under the guise of

merely being UDWA's agent, SEIU Locals 250 and 998 hoped to organize ACI's employees in Ventura and San Joaquin Counties. They expected to collect authorization/dues check-off cards from a majority of these ACI employees. These tactics, standing alone and without any traditional threats or coercion, do not violate Section 8(b)(1)(A).27 Absent some evidence of traditional union "restraint or coercion" directed at employees within the Section 10(b) period,28 we conclude that UDWA and Locals 250 and 998 did not violate Section 8(b)(1)(A) by their organizational activities under false pretenses.

In sum, through its entire course of conduct, UDWA effectively disclaimed interest in representing ACI's San Joaquin and Ventura County employees. UDWA could not thereafter resurrect its Section 9(a) bargaining status. Therefore, following such effective disclaimer, it had no statutory authority or obligation to bargain with the Employer under the Act. Thus, the pending 8(b)(3) charge against UDWA should be dismissed, absent withdrawal. Additionally, the SEIU Locals' organizational campaign by false pretenses via their dealings with the Employer within the 10(b) period did not constitute either acceptance of illegal assistance or "restraint or coercion" under Section 8(b)(1)(A). Finally, there is no evidence that any of the Unions engaged in traditional "restraint or coercion" directed at ACI employees in their exercise of their Section 7 rights within the 10 (b) period. Thus, there is no basis to conclude that the Unions violated Section 8(b)(1)(A) by attempting to substitute the SEIU Locals for UDWA as representative of the Employer's Ventura and San Joaquin County employees.29

B.J.K.

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1 There are no ULP allegations regarding ACI units other than San Joaquin and Ventura counties.

2 All dates hereafter are in 2001, unless otherwise noted.

3 There is no direct evidence that any SEIU representative did, in fact, solicit employees to sign such a dues checkoff card.

4 This letter was similar in content to the one Seaton-Msemaji sent to the ACI San Joaquin unit employees on January 16. It did not, however, specifically urge employees to sign membership and dues checkoff authorization cards for SEIU Local 998.

5 The last collective-bargaining agreement between UDWA and ACI provided for such meetings to discuss problems and contract administration.

6 See, e.g., Avon Convalescent Center, 204 NLRB 415 (1973).

7 See Sisters of Mercy Health Corp., 277 NLRB 1353, 1354 (1985); Joint Council of Teamsters No. 42 (Grinnell Fire Protection Systems Co., Inc.), 235 NLRB 1168 (1978), affd. sub nom. Dycus v. NLRB, 615 F.2d 820 (9th Cir. 1980). See also Goad Company, 333 NLRB No. 82 (2001) in which the Section 9(a) representative, Local 420, entered into an agreement with another union, Local 562, that transferred Local 420's representational responsibilities to Local 562. 333 NLRB No. 82, slip op. at 3-4, 1 at n. 1. The Board concluded that such an agreement was too broad to make Local 562 a bona fide agent of Local 420. Accordingly, the Board dismissed the Section 8(a)(5) complaint based upon the employer's refusal to meet and bargain with the Local 562 business agent who was purportedly acting as an agent of Local 420. The complaint did not allege that the employer had withdrawn recognition from Local 420. Nor did the employer otherwise argue that Local 420 had disclaimed representational status. In these circumstances the Board did not pass on whether Local 420's attempted transfer of representational jurisdiction from itself to Local 562 extinguished the employer's continuing obligation to bargain with Local 420. Id., at p. 1, n. 1.

8 See Sisters of Mercy Health Corp., 277 NLRB at 1354 (while incumbent union did not expressly disclaim representation, its course of conduct in permitting another union to act as the bargaining representative constituted an effective disclaimer of representation).

9 See Sisters of Mercy Health Corp., 277 NLRB at 1354 (incumbent union's agreement to transfer jurisdiction over bargaining unit to another labor organization can constitute an effective disclaimer of interest).

10 See Goad Company, 333 NLRB No. 82, slip op. at 4 (relying heavily on indemnification agreements to conclude that incumbent had agreed to transfer jurisdiction and not simply established agency relationships with second union). Although as noted above, n. 7, the Board declined to pass on whether the Union's conduct there constituted a disclaimer, it agreed that the conduct went beyond appointment of an agent and constituted a transfer of jurisdiction. Given the additional indicia of disclaimer here, we believe the indemnification agreements strongly support a conclusion that UDWA here permanently disclaimed representational status for ACI's employees in Ventura and San Joaquin Counties.

11 See Sisters of Mercy Health Corp., 277 NLRB at 1355-56 (union unequivocally disclaimed any interest in the unit when it transferred jurisdiction to a sister local and acted consistently with the transfer of jurisdiction for more than two months).

12 See generally Amalgamated Meat Cutters etc., Local 158, AFL-CIO (Eastpoint Seafood Co.), 208 NLRB 58, 59 (1974) (union validly disclaimed representation for lawful purpose in order to vindicate union "no-raid" obligations).

13 See Sisters of Mercy Health Corp., 277 NLRB at 1354.

14 Ibid.; Conkle Funeral Home, 266 NLRB 295, 298 (1983).

15 See, e.g., Amalgamated Meat Cutters etc. Local 158, AFL-CIO (Eastpoint Seafood Co.), 208 NLRB at 59 (union had no bargaining obligation following valid disclaimer); IBEW (Steinmetz Electrical Contractors Ass'n), 234 NLRB 633, 634-635 (1978)(same).

16 See ILGWU v. NLRB (Bernhard-Altmann Texas Corp.), 366 U.S. 731, 737-738 (1961)(employer violates 8(a)(2) when it grants exclusive recognition to a minority union); ILGWU (Bernhard-Altmann Texas Corp.), 122 NLRB 1289, 1293, n. 9 (1959), affd. 366 U.S. 731 (1961)(minority union violates Section 8(b)(1)(A) of Act when it accepts exclusive recognition from an employer as a purported Section 9(a) representative); Local 814 Teamsters (Morgan and Brother-Manhattan Storage Co., Inc.), 223 NLRB 527 (1976) (Union violated Section 8(b)(1)(A) where employer extended, and the minority union accepted, exclusive recognition over a bargaining unit.)

17 See, e.g., SuCrest Corp., 165 NLRB at 603 (district council that was not the certified 9(a) representative violated 8(b)(1)(A) by exacting dues from employees "under duress of threatened or demanded loss of jobs"); Hermet, Inc., 222 NLRB at 39 (union, by its president, violated 8(b)(1)(A) by telling employees that "if they did not sign transfer applications, they would never work in New Jersey"); Standard Concrete, 260 NLRB at 903 (union found not be joint representative unlawfully attempted to enforce union security clause).

18 See generally NLRB v. Drivers, etc., Teamsters Local 639 (Curtis Brothers, Inc.), 362 U.S. 274, 285-292 (1960) (peaceful picketing by a minority union to compel an employer to grant exclusive recognition does not violate Section 8(b)(1)(A) of Act based upon restrictive Congressional legislative history to that section).

19 See Joint Council of Teamsters No. 42 (Grinnell Fire Protection Systems Co., Inc.), 235 NLRB at 1169 (absent evidence of coercion, transfer of jurisdiction over union members did not violate Section 8(b)(1)(A)), enfd. sub nom. Dycus v. NLRB, 615 F.2d at 826 ("We find no support . . . for the proposition that the attempt to substitute a new employee representative constitutes an unfair labor practice in the absence of coercive conduct aimed at compelling an employee to accept the new representative").

20 See generally NLRB v. Cabot Carbon Co., 360 U.S. 203, 212-215 (1959)(illegal assistance under Section 8(a)(2) does not require collective bargaining with a minority union, but can include "dealing with" an employee committee regarding working conditions). See also Electromation, Inc., 309 NLRB 990 (1992), enfd. 35 F.3d 1148 (7th Cir. 1994).

21 See, e.g., Avon Convalescent Center, 204 NLRB at 416 (where evidence demonstrated recognition demand by business agent of one local was made on behalf of certified local, prima facie case for a bargaining violation presented).

22 While the May 9 unfair labor practice charge against ACI filed by SEIU Local 998 might be viewed as an admission of the Unions' scheme, it was not considered, by itself, to have put ACI on clear notice that SEIU Local 998 was acting as the

substitute Section 9(a) representative.

23 The Service Agreements entered into between UDWA and the two SEIU Locals, even if received by the Employer prior to its refusal to deal with the SEIU Locals, would be insufficient to clearly put the Employer on notice that the Unions' true intention was a substitution of bargaining representative, rather than the creation of a mere agency. The Service Agreements, on their face, provide that UDWA would remain the 9(a) representative of ACI's San Joaquin and Ventura County employees.

24 See Clark Equipment Co., 249 NLRB 660, 660-661 (1980) (Board dismissed 8(a)(2) complaint where employer negotiated and entered into successor labor agreement with incumbent union at a time when the union no longer had majority support, but where employer had no objective evidence of such loss of support).

25 See Local Lodge No. 1424, IAM v. NLRB (Bryan Mfg. Co.), 362 U.S. 411 (1960).

26 Grinnell Fire Protection Systems, supra. No. 19.

27 See NLRB v. Drivers, etc., Teamsters Local 639 (Curtis Brothers, Inc.), 362 U.S. at 285-292.

28 Compare, e.g., Hermet, Inc., 222 NLRB at 39; Local 420 Teamsters (Standard Concrete), 260 NLRB at 903; SuCrest Corp., 165 NLRB at 603.

29 In these circumstances, it is unnecessary to pass on the remedial issues posed by the Region. Case 32-CB-5400, et al.